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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/284,983	05/11/99	MANNER	D T8463488US
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QM01/0926

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COMMERCE COURT WEST  
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AIR MAIL

EXAMINER

CLARKE, S

ART UNIT

PAPER NUMBER

3743

8

DATE MAILED: 09/26/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trad marks**

# Office Action Summary

Application No.  
09/284,983

Applicant(s)

Manner

Examiner

Sara Clarke

Group Art Unit  
3743



☒ Responsive to communication(s) filed on Aug 31, 2000

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-20 and 22 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1-18 and 20 is/are rejected.

☒ Claim(s) 19 and 22 is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☒ The proposed drawing correction, filed on Jul 13, 2000 is ☒ approved ☐ disapproved.

☒ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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## **DETAILED ACTION**

### ***Drawings***

The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on July 13, 2000, have been approved.

### ***Specification***

The disclosure is objected to because of the following informalities: On page 16, the sentence starting on line 21 is missing a verb. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4-6, 11, 12, 14, 15, and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Campana (US 5290326). Campana discloses the invention as claimed including a substantially conical porous carrier can be made from cotton strands, paper towels, and paper materials impregnated with wax. See column 4, lines 50-58. These materials are "self-supporting."

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Claims 1, 4, 6, 7, 11, and 17 are rejected under 35 U.S.C. 102(b) as anticipated by Alexander (US 3395003). Alexander discloses the invention as claimed including the fuel source being an insect repellant. Note on line 4 of claim 1, the material includes citronella oil. Note also, on lines 5 and 6 of claim 1, that the paraffin impregnates the porous carrier. As disclosed in column 1, lines 67 to the bottom, the paper material is capable of being manipulated into a shape. Since it retains this shape it is considered self-supporting as required by the claims.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 6, 7, 11, and 18 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Tanner (US 4326854). Tanner discloses the invention as claimed including a non-combustible carrier such as coal dust. See column 2, lines 65. The compressed pulp of Tanner would be self-supporting by virtue of the heat and pressure extrusion step. The addition of the wax may create a larger article, e.g., a log, however the components have self-supporting character. That is, the individual pulp fibers do not separate from each other after the

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extrusion step.

Claims 1-9, 11, and 20 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Shinholster, Jr. et al. (US 4369054). Shinholster, Jr. et al. discloses the invention as claimed including a log made of pulp, slag, and a resin. See column 6, lines 33-40. Shinholster, Jr. et al. also discloses that the log structure comprises pulp made from among other things paper pulp, nylon fibers, or newsprint (long strand wood fibers). See column 4, lines 9 and 10. Shinholster, Jr. et al. further discloses the use of both short or long fibers from 1/16 to 1/2 long fibers. See column 4, lines 28-45. The compressed pulp of Shinholster, Jr. et al. would be self-supporting by virtue of the drying and compressing step. The addition of the resin may create a larger article, e.g., a log, however the components have self-supporting character. That is, the individual pulp fibers do not separate from each other after the drying and compressing step.

Claims 10 and 13 are rejected under 35 U.S.C. 103(a) as unpatentable over Jesse (US 5342418) in view of Chen et al. (US 5037409). Jesse discloses the invention substantially, including the use of cellulosic fiber material used in the diaper industry, as claimed except for an express recitation of wood fibers from processing wood pulp fluff as the cellulosic material. Chen et al. teaches that it is conventional to use fibers of wood pulp fluff as the cellulosic constituent of diapers. It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to use

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conventional fibers of wood pulp fluff as the cellulosic constituent in the fuel of Jesse because the disclosure of Chen et al. teaches that the use of this material as a matter of conventional knowledge in the art and as such would have been readily appreciated by those skilled in the art.

Claim 16 is rejected under 35 U.S.C. 103(a) as unpatentable over Haymond (US 2107054) in view of Ferguson (US 4381914) and Shinholster, Jr. et al. Haymond discloses the invention substantially as claimed with the exception of an ignition means adjacent the combustion initiating means and the carrier being made of dried pulped fiber. Ferguson discloses a candle and teaches the use of a match adjacent a wick to aid in igniting the wick. Shinholster, Jr. et al. teaches the use of using pulped fiber to make artificial logs. It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to provide the fuel unit of Haymond with an ignition means adjacent the combustion initiating means as taught by Ferguson to aid in igniting the combustion initiating means. It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to make the fuel source of Haymond using pulped fiber as taught by Shinholster, Jr. et al. because pulped fiber is a readily available waste product.

***Allowable Subject Matter***

Claims 19 and 22 are objected to as being dependent upon a rejected base

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claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Amendment***

The examiner thanks that applicant's representative for sending a supplemental amendment in compliance with 37 CFR 1.52(b) (at least 1½ spaced).

For claims 1-18, and 20, Tanner, Shinholster, Jr. et al., Campana, Alexander, Jesse, Chen, Ferguson, and Haymond disclose the invention as claimed. However, to the extent that the product-by-process limitations necessarily distinguish the invention from the prior art, the examiner has noted that the applicant's specification does not set forth that such differences unexpectedly solve some problem in the art nor unexpectedly provide some new result when compared with the applied art. Accordingly, such differences appear to be a mere matter of design choice. ("If the product in a product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." MPEP §2113 quoting *In re Thorpe, et al.*, 227 USPQ 964, 966 (CAFC 1985))

With regard to the arguments against the application of the Campana reference, the examiner notes that the composition of the wick meets the claim limitations. That the Campana composition relates to a wick and not an ignitor is a matter of intended

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use of the composition. Likewise, regarding the applicant's discussion of the Alexander reference, that the composition is a kindling source rather than a fuel source for "sustained burning" is a matter of intended use. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

Regarding the applicant's arguments that the citronella is not added in a quantity sufficient to act as a primary fuel, the examiner notes that neither primary versus secondary fuels nor fuel quantities are not discussed in the claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

With regard to the Jesse reference, the applicant argues that it teaches the use of a thermoplastic to bond fiber in an extrusion process which is contrary to the claim requirement of a self-supporting porous carrier of dried pulped fiber. The examiner notes that the wood pulp fluff fibers of the diaper by themselves would be a "self-supporting" mass.



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### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

### ***Contact Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sara Clarke whose telephone number is (703) 308-1388. The examiner normally can be reached on weekdays from 8:30 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira Lazarus, can be reached at (703) 308-1935. The facsimile number for

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this group is (703) 305-3463.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is (703) 308-0861.

Sara Clarke  
September 25, 2000

  
Ira S. Lazarus  
Supervisory Patent Examiner  
Group 3700